

REMARKS/ARGUMENTS

Favorable reconsideration of this application in light of the following discussion is respectfully requested. Claims 2, 4, 5, 7, 8, 10, 11 and 13 are pending in the application. No claim amendments are presented, thus no new matter is added.

In the Office Action, Claims 2, 5 and 8 were rejected under 35 U.S.C. §103(a) as unpatentable over Sarkkinen (U.S. Pub. 2001/0046877); and Claims 4, 7, 10, 11 and 13 were indicated as allowed. Applicants appreciatively acknowledge the indication of allowable subject matter.

Regarding the rejection of Claims 2, 5 and 8 as unpatentable over Sarkkinen, Applicants respectfully traverse this rejection as independent Claims 2, 5 and 8 recite novel features clearly not rendered obvious by the applied reference.

Amended independent Claim 2 relates to a radio communication system in which the same information is transmitted from a radio station to a plurality of mobile stations (e.g. multicast) with a predetermined downlink transmission power. The radio station includes a transmission power controller configured to control the predetermined downlink transmission power based on control information transmitted by the mobile stations. Specifically, Claim 2 recites that the mobile stations comprise:

a decision unit configured to decide to transmit the control information to the radio station at a predetermined frequency, *without using reception quality of the same information transmitted by the radio station*, when the same information is received by a transceiver...

Independent Claims 5 and 8, while directed to alternative embodiments, recite similar features. Accordingly, the remarks and arguments presented below are applicable to each of independent Claims 2, 5 and 8.

Turning to the applied reference, Sarkkinen describes a system and method for controlling the power level of multicast data transmissions in a wireless communications network.¹

As conceded in the Office Action Sarkkinen “lacks a teaching of the decision unit deciding without using reception quality of the same information transmitted by the radio station when a plurality of the same information is pieces (sic).” In an attempt to remedy this deficiency, the Office Action relies on Official Notice “that it would have been obvious... that removing a reception quality measurement would simplify the arrangement.” Applicants respectfully traverse this assertion, as removing the reception quality measurement as a trigger for controlling the transmission of control information in Sarkkinen would render the system inoperable for its intended purpose.

More specifically, Sarkkinen describes that a UTRAN transmits system broadcast information (i.e., SIB signaling messages) including a predetermined threshold (i.e., SIB value) to all UEs in a cell by broadcast using the BCH transport channel.² When the power level value of the SIB signaling message measured by a UE is less than the SIB value included in the received SIB signaling message, the UE transmits a multicast power indication to the UTRAN.³ The RNC 30 in the UTRAN controls the starting power level for multicast data transmission based on the multicast power indication transmitted from the UE.⁴

Further, paragraph [0034] of Sarkkinen describes that whether UE 11 or 12 sends a power level measurement indication may be based on any number or combination of factors in addition to the simple logical comparison of the relative values. For example, it could depend on how small the difference is between the measured value and power value received

¹ Sarkkinen, Abstract.

² Id., para. [0033], ll. 1-6, and ref. numeral 301 of Fig. 3.

³ Id., para. [0033], ll. 12-26, and ref. numerals 303 and 304 of Fig. 3.

⁴ Id., para. [0036], ll. 7-9.

in the SIB signalling messages or whether the value exceeds the "absolute highest power level" indicated in the SIB signalling messages. It could depend on the priorities of the multicast services which it is capable of receiving. It could also depend on the type of multicast service it is capable of receiving (e.g., a multicast service tied to a certain place such as a mall or sports arena). There may be a plurality of different power level measurement indication types corresponding to the various combinations of factors.

Thus, Sarkkinen unequivocally describes that the decision regarding when to transmit a power level measurement indication from the UE is based on one of the above noted comparisons of the reception quality of the information transmitted by the UTRAN. Without such a comparison, the UE in Sarkkinen's system would be inoperable for its intended purpose, which is to transmit the power level measurement indication based on the comparison parameters set forth in Sarkkinen's disclosure. Therefore, it would not have been obvious for one of ordinary skill in the art at the time of the invention to remove such a feature from Sarkkinen's system.

The Office Action also asserts that removing such a feature would "simplify the arrangement" of Sarkkinen. However, since Sarkkinen's system depends of the comparison in order to determine when to transmit the power level measurement indication, it is unclear how removing this component would simplify the system. If anything, it would appear to make the system more complex because the UTRAN would have no idea when a power level measurement indication might be coming from a UE, and the UE may not send a power level measurement indication when one might be deemed necessary to efficiently control the power of the downlink at the UTRAN.

Further, with regard to the above noted deficiency in light of the rejection under 35 U.S.C. § 103, it appears that the Office Action is taking official notice without providing a citation in support of its assertion. If Official Notice is being taken, Applicants respectfully

submit that Official Notice alone is not permissible as grounds for rejection in the outstanding Office Action. As stated in the MPEP at § 2144.03(A):

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21.

With regard to the above, Applicants respectfully submit that the features advantageously recited in at least Claims 2, 5 and 8 are not “capable of instant and unquestionable demonstration as being well-known.”

As discussed above, Sarkkinen clearly describes that the function of his system is predicated on the UE comparing a received signal quality to a threshold and determining whether a power level measurement is sent to the UTRAN based on this indication.

Sarkkinen fails to remotely teach or suggest that it would be desirable for his system to function without such a comparison. Therefore, Applicants respectfully submit that the feature of deciding to transmit control information from a UE to a UTRAN a predetermined frequency, ***without using reception quality of the same information transmitted by the radio station***, is not “capable of instant and unquestionable demonstration as being well-known.”

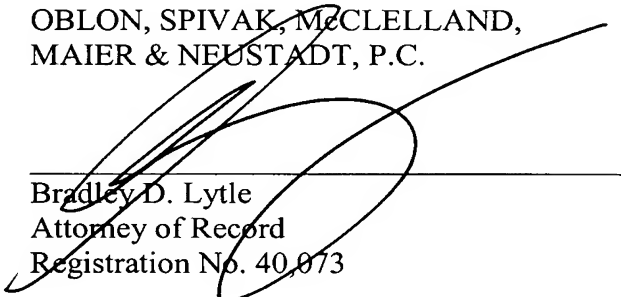
Therefore, Applicants respectfully submit that Sarkkinen fails to teach or render obvious the configuration recited in independent Claims 2, 5 and 8 in which a mobile station “decides to transmit the control information to the radio station at a predetermined frequency, ***without using reception quality of the same information transmitted by the radio station***.”

Accordingly, for at least the reasons discussed above, Applicants respectfully request that the rejection of Claims 2, 5 and 8 under 35 U.S.C. § 103 be withdrawn.

Consequently, in view of the present amendment and in light of the foregoing comments, it is respectfully submitted that the invention defined by Claims 2, 4, 5, 7, 8 and 10, 11 and 13 is patentably distinguishing over the applied references. The present application is therefore believed to be in condition for formal allowance and an early and favorable reconsideration of the application is therefore requested.

Respectfully submitted,

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